LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
SEP 29 1970
SERVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1970

No. 770

OWNERS OR PARTIES IN INTEREST:

ACHILLES C. PULAKOS, *Petitioner*

v.

REDEVELOPMENT AUTHORITY OF THE CITY OF ERIE, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

WILLIAM W. KNOX
EDWIN L. R. McKEAN
23 West Tenth Street
Erie, Pennsylvania 16501

KNOX, GRAHAM, PEARSON,
McLAUGHLIN & SENNETT
Of Counsel

September, 1970

THE LEGAL INTELLIGENCER, 69 NORTH JUNIPER STREET, PHILA., PA. 19107

INDEX

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented for Review	2
Constitutional Provisions and Statutes involved	2
Statement of the Case	3
Reasons for Granting the Writ:	
I. Refusal to Hear Appeal Untimely Filed as Violative of Equal Protection	6
II. Failure to Inquire into the Circumstances of An Untimely Filed Appeal as Violative of Due Process	8
Conclusion	9
Appendix "A"—Opinion of the Court of Common Pleas of Erie County, Pennsylvania	10
Appendix "B"—Opinion of the Supreme Court of Pennsylvania, Western District	23
Appendix "C"—Statutory Provisions Involved	25

TABLE OF CITATIONS

Cases:

Baxstrom v. Herold, 383 U.S. 107, 86 S. Ct. 760	8
Commonwealth v. Bey, 437 Pa. 134, 262 A. 2d 144 (1970)	6
Commonwealth v. Mackley, 380 Pa. 70, 110 A. 2d 172 (1955)	6
Commonwealth v. Simon, 413 Pa. 609, 198 A. 2d 583 (1964)	6
Francis v. Brashear School District, 435 Pa. 589, 258 A. 2d 509 (1969)	4

TABLE OF CITATIONS—(Continued)

Cases:	Page
Kramer v. Union Free School District, 395 U.S. 621, 89 S. Ct. 1886	8
Nixon v. Nixon, 329 Pa. 256, 198 A. 154 (1938)	6, 7, 8
Rinaldi v. Yeager, 384 U.S. 305, 86 S. Ct. 1497	7
Twining v. New Jersey, 211 U.S. 78, 29 S. Ct. 14	9
Williams v. Oklahoma City, 395 U.S. 458, 89 S. Ct. 1818	7
Williams v. Rhoades, 393 U.S. 23, 89 S. Ct. 5	8
Rule:	
Rules of the Supreme Court of Pennsylvania, Rule 71	9
Statutes:	
Pennsylvania Eminent Domain Code, 26 Purdon's Pa. Stat. Ann. 1-101, et seq.	3
Pennsylvania Urban Redevelopment Law, 35 Purdon's Pa. Stat. Ann. 1701	4
Statutory Construction Act, 46 Purdon's Pa. Stat. Ann. 538	4

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1970

No. ———

OWNERS OR PARTIES IN INTEREST:

ACHILLES C. PULAKOS, *Petitioner*

v.

REDEVELOPMENT AUTHORITY OF THE CITY OF ERIE, *Respondent*

Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania

---

Petitioner prays that a Writ of Certiorari issue to review a judgment of the Supreme Court of Pennsylvania which quashed Petitioner's Appeal from a final order of the Court of Common Pleas of Erie County, Pennsylvania.

OPINIONS BELOW

The opinion of the Court of Common Pleas (R-423 to R-437) is not reported and appears as Appendix A hereof. The opinion of the Supreme Court of Pennsylvania (R-490 to R-491) is reported at 439 Pa. 157 and appears as Appendix B hereof.

References to the record are made according to the pagination assigned the record by the Supreme Court of Pennsylvania in its certification.

JURISDICTION

The judgment of the Supreme Court of Pennsylvania was entered on July 2, 1970. A timely petition for reargument was denied on August 13, 1970. (Docket Entries, R-489). The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTIONS PRESENTED FOR REVIEW

(1) Was Petitioner denied the equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution where the Pennsylvania Supreme Court refused to entertain an Appeal filed on day late as the result of an unusual and unexplained delay in the United States mails over which Petitioner had no control while accepting appeals filed late as the result of error or omission on the part of other governmental agencies?

(2) Was Petitioner deprived of property without due process of law in violation of the Fourteenth Amendment to the United States Constitution where the Pennsylvania Supreme Court quashed his appeal for late filing without an inquiry into the circumstances where in other cases that Court has accepted untimely appeals upon satisfactory explanation of the delay?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitutional provisions involved are contained in the Fourteenth Amendment to the United States Constitution. The Pennsylvania statutory provision involved is the Eminent Domain Code, Act of June 22, 1964, P. L. 84, Art. V, Section 523; 26 Purdon's Pa. Stat. Ann. 1-523 providing for appeal in condemnation cases to the Supreme Court of Pennsylvania.

STATEMENT OF THE CASE

This was a condemnation case initiated by Respondent Redevelopment Authority's declaration of taking (R-4) filed pursuant to the Pennsylvania Eminent Domain Code, 26 Purdon's Pa. Stat. Ann. 1-101, et seq. Petitioner, pursuant to the procedure required by the Eminent Domain Code, filed preliminary objections to the taking. (R-9 and R-13)

Petitioner's property fronts on State Street in Erie, Pennsylvania and is located in the commercial heart of the City and within an area of twelve square blocks which has been certified for redevelopment. (R-36) For more than fifty years Petitioner and his family have manufactured and sold fine chocolates and confections at this site and in fact the street address "926" has been Petitioner's trademark for years. (R-197) The business has been very successful and in recognition of this success the American Retail Confectioners Association in conjunction with Gannon College conducts at Petitioner's place of business the only school in the world that instructs in the science of candy making. Students regularly come from places as far as France, Italy, Greece and South America. (R-186) Over the years Petitioner has annually expended substantial sums for maintenance, repair and modernization of his facilities. (R-351)

Petitioner asserted that he was being treated arbitrarily by Respondent because his property was being condemned while another similar property also located within the same redevelopment project was scheduled for retention. Petitioner's property is shown in Block 31 of Condemnor's Exhibit 21 as being located on State Street and between two other parcels designated for acquisition. (R-414) The similar property designated for retention is shown in Block 25 of the same Exhibit as being located on State Street between two other parcels similarly designated for acquisition.

Petitioner contended that municipal agencies, including the Respondent Authority, had determined to build a motor hotel on a site which included Petitioner's property prior to the time the area was certified as blighted and prior to the adoption of a redevelopment plan as is required by the Pennsylvania Urban Redevelopment Law, 35 Purdon's Pa. Stat. Ann. 1701.

Petitioner asserted that the Respondent Authority was blinded to the complete implausibility of its plan and that the record proved that there could be no reasonable expectation that any motor hotel would ever be built on the site.

Petitioner argued that condemnation of his family business without a reasonable probability of a hotel being built would result in an unlawful and unjustifiable discrimination between himself and the property owner similarly situated and located only two blocks down the street.

Petitioner's preliminary objections were dismissed by the Trial Court on September 11, 1969. Petitioner filed a motion for rehearing with the Trial Court which was denied. (R-442) Since the Trial Court did not grant a rehearing, Pennsylvania Law requires that the time for taking appeal to the Supreme Court of Pennsylvania be computed from the date of the final order which in this case was September 11, 1969. *Francis v. Brashear School District*, 435 Pa. 589, 258 A. 2d 509 (1969).

The Pennsylvania Eminent Domain Code, 26 Purdon's Pa. Stat. Ann. 1-523, provides that an appeal may be lodged with the Supreme Court of Pennsylvania within forty-five days from the entry of a final order. Since the order dismissing Petitioner's preliminary objections was entered September 11, 1969, Petitioner's time for appeal expired October 26, 1969, but since that date was a Sunday the time was extended to October 27, 1969, by virtue of the Statutory Construction Act, 46 Purdon's Pa. Stat. Ann. 538.

On October 23, 1969 Petitioner's Counsel mailed the required appeal form, certified mail from Erie, Pennsyl-

vania to the Prothonotary of the Supreme Court of Pennsylvania, a distance of approximately 130 miles. (R-504 to R-506)

By letter dated October 28, 1969 the Prothonotary's Office advised Petitioner's Counsel of the receipt of the letter of October 23, 1969 and the entry of the appeal but did not advise him either of the date the letter with its enclosures was received or the date the appeal was actually docketed. (R-507) Petitioner and his Counsel assumed all was well.

The record for the Trial Court (R-1 to R-450) and briefs for Petitioner and Respondent (R-451 to R-488) devoted to the merits of the controversy were printed and filed with the Prothonotary. Subsequently, on March 19, 1970, Argument on the merits was heard before the Pennsylvania Supreme Court. (R-489) The issue of late filing was not raised by Petitioner, Respondent, the Prothonotary or by the Court. Numerous questions were posed with respect to the merits of the case.

On July 2, 1970 the Supreme Court of Pennsylvania issued its opinion. (App. B) Petitioner's appeal was quashed for late filing without mention of the merits of the case. For the first time, and eight months after the appeal was filed, and after the expenditure of much time and money, both Petitioner and Respondent discovered that the appeal had been docketed one day late. Petitioner timely filed a petition for reargument with supporting affidavits which set forth the circumstances of the filing of the appeal. (R-492) On August 13, 1970, the request for reargument was denied. (R-489)

The appeal form was mailed October 23, 1969, certified mail, to a point 130 miles from the place of deposit under circumstances where normal delivery is overnight. Postal officials are at a loss to explain a delay of four days in delivery except that the letter may have been missorted into fourth class mail, and remained undetected for several days. (R-494, 495)

REASONS FOR GRANTING THE WRIT

I. Refusal to Hear Appeal Untimely Filed as Violative of Equal Protection

The Supreme Court of Pennsylvania has held on numerous occasions that compliance with statutory provisions granting the right of appeal go to the jurisdiction of the Court and that the Court is "without the power to enlarge or extend the time provided by statute for taking an appeal. . . ." *Commonwealth v. Bey*, 437 Pa. 134, 137, 262 A. 2d 144, —— (1970). See: *Commonwealth v. Simon*, 413 Pa. 609, 198 A. 2d 583 (1964) and *Commonwealth v. Mackley*, 380 Pa. 70, 110 A. 2d 172 (1955).

Nevertheless, there are exceptions to this rule. In *Nixon v. Nixon*, 329 Pa. 256, 198 A. 154 (1938), appellant appealed a judgment of a trial judge to the Pennsylvania Superior Court, an intermediate appellate court, which affirmed the judgment of the lower court. Although the Prothonotary of the Superior Court was not bound by statute or rule of court to mail notices of decisions of the Superior Court, it was his custom to do so. On this occasion he did not mail the notice of decision. Consequently, appellant did not learn of the decision until it was published in the Advance Reports and by then his time for appeal to the Pennsylvania Supreme Court had expired. The Court held that although the Prothonotary was under no statutory obligation to give notice, his custom of doing so excused appellant's untimely appeal. The Supreme Court said:

> "Neither appellant nor his counsel knew, nor had any reason to believe, there had been a mistake in the prothonotary's office. Under the circumstances they were entitled to expect this notice. The Harrisburg District is composed of twelve counties, and the opinions on cases arising there are handed down at various places at which the court sits, usually cities other than Harrisburg. Counsel lives in Adams County, and

> it would impose too great a burden to require him to daily inform himself by telephone. Appellant, through his attorney, was lulled into security by this practice, and his failure to receive such notice is a sufficient reason for us to hold that appellant should be permitted an appeal. To hold otherwise would work a grave injustice." *Nixon v. Nixon*, 329 Pa. 256, 261, 198 A. 154 (1938).

The effect of the Court's holding was to allow an appeal although untimely filed where the cause of the delay was out of the control of the litigant. The facts of the present case are remarkably similar. An appeal was mailed to the prothonotary of the Supreme Court of Pennsylvania, a distance of 130 miles, well in advance of the deadline and well within the period of normal mail delivery. As the result of unexplained and unusual delay in delivery, the appeal was filed one day late. Counsel was notified by the prothonotary that the appeal was filed but was not informed of the day of filing or that the time for appeal had expired. Briefs were prepared and printed and the case argued, all without mention of the late filing. Nevertheless, Petitioner is denied an appeal in a case involving substantial property rights. Petitioner believes this refusal to consider the merits to be a deprivation of the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

It is true that a State is not required to provide appellate review but once an appeal procedure is established "it must be kept free of unreasoned distinctions that only impede open and equal access to the Courts". *Rinaldi v. Yeager*, 384 U.S. 305, 310-311, 86 S. Ct. 1497, 1500. See also: *Williams v. Oklahoma City*, 395 U.S. 458, 89 S. Ct. 1818.

This Court has held that:

> "In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the in-

> terests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification." *Williams v. Rhodes*, 393 U.S. 23, 30, 89 S. Ct. 5, 10.

See also, *Kramer v. Union Free School District*, 395 U.S. 621, 89 S. Ct. 1886; *Baxstrom v. Herold*, 383 U.S. 107, 86 S. Ct. 760. Petitioner believes that the Pennsylvania Supreme Court has made an "unreasoned distinction" between the appellant in *Nixon v. Nixon*, supra, and petitioner and that the distinction cannot prevail when measured against the test of *Williams*.

The interest the State claims to be protecting is finality of judicial action. *Nixon v. Nixon*, supra. The Court in that case carved out an exception for a litigant disadvantaged by a custom of the prothonotary and the fact that it would be too great a burden to require counsel who lives a distance from the courthouse to obtain information by telephone. The basic fact is that the decision of the Pennsylvania Supreme Court in the present case requires counsel to no longer utilize the mails and instead drive great distances to file papers, with an attendant unnecessary and unreasonable expense to the client. Furthermore, the Petitioner herein had no more control over the mails than the appellant in *Nixon* had over the prothonotary. The interest of the State is far outweighed by the loss sustained by the Petitioner by the taking of his property and lifetime business without a full hearing on the merits of his case.

II. Failure to Inquire into the Circumstances of An Untimely Filed Appeal as Violative of Due Process

The question of an untimely filed appeal was not raised at any time during argument of the case. Petitioner and Respondent briefed and argued only the merits. The Court did not raise the issue. Argument took place on March 19, 1970, nearly five months after the appeal was

filed and after Petitioner had gone to great expense in preparing for his appeal. Subsequently, on July 2, 1970, eight months after the appeal was filed, an opinion was issued quashing the appeal without a discussion of the merits. The Court's opinion indicates that the Court did not know when the appeal form was mailed. (App. B) Nevertheless, without any inquiry into the facts surrounding the filing of the appeal form, the appeal was quashed even though the Court in *Nixon* recognized that an opportunity to satisfactorily explain delay should be afforded. It is true that Petitioner's Counsel filed a motion for reargument explaining the delay. Nevertheless, eight months had passed since the filing of the appeal and it was therefore impossible to determine what had happened either at the Post Office or at the office of the prothonotary of the Court. In any event, Petitioner's Counsel had only ten days to file the motion for reargument and in that time it was necessary to travel to Pittsburgh to make inquiries at the Post Office and at the Court, prepare the motion for reargument and guarantee its filing at Pittsburgh within the time limit. *Rule 71, Rules of the Supreme Court of Pennsylvania.*

Petitioner believes that to deny his appeal for late filing without an inquiry into the circumstances where exceptions previously have been carved out is such "an arbitrary action of government" as to deprive Petitioner of property without due process of law. *Twining v. New Jersey*, 211 U.S. 78, 29 S. Ct. 14.

CONCLUSION

For the foregoing reasons, Petitioner prays that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

KNOX, GRAHAM, PEARSON, McLAUGHLIN & SENNETT

BY: William W. Knox, Esquire
Edwin L. R. McKean, Esquire

APPENDIX A

OPINION OF THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA

CARNEY, P. J.

This matter is before the court on preliminary objections filed on behalf of Achilles C. Pulakos, the owner of the property located at 926 State Street, Erie, Pennsylvania. The objections are made to the declaration of taking by the Redevelopment Authority of the City of Erie under the provisions of Sec. 406 of the Eminent Domain Code of the Commonwealth of Pennsylvania. The owner, and his grandfather and father before him, have been engaged in the manufacture and sale of candy at the location in question since approximately 1915, and are members of one of the most prominent and respected families in the community.

In the brief filed on behalf of the owner, and at the oral argument held before this court, his opposition to the condemnation is based upon the following preliminary objections.

(1) That the area (generally bounded by West 6th Street and South Park Row on the north, French Street on the east, Tenth Street on the south, and Sassafras Street on the west) certified as blighted by resolution of the City Planning Commission dated October 30, 1962, is and was not, in fact, blighted within the meaning of the Urban Redevelopment Law of Pennsylvania.

(2) That the planning division's certification of blight was arbitrary.

(3) That the authority acted arbitrarily in condemning the property of the owner.

(4) That the planned re-use of the property in question, i.e., transient housing, does not have a reasonable probability of fulfillment.

Findings of Fact

(1) The Redevelopment Authority of the City of Erie is a duly organized and existing authority under the terms of the Urban Redevelopment Laws of Pennsylvania, the Act of May 24, 1945, P. L. 990, Sec. 1 et seq., as amended.

(2) That the City Planning Commission of the City of Erie, by resolution dated October 30, 1962, certified within the meaning of said Urban Redevelopment Law, a certain area generally bounded by West Sixth Street and South Park Row on the north, French Street on the east, Tenth Street on the south, and Sassafras Street on the west, as a redevelopment area. Said area has commonly become known as "Downtown Erie Urban Renewal Project Area."

(3) That the Downtown Erie Urban Renewal Project Area is a blighted area within the legislative requirements of Section 2 of the Urban Redevelopment Laws of Pennsylvania, Act of May 24, 1945, P. L. 990, Sec. 1, 35 P. S. 1701.

(4) That by appropriate action the Redevelopment Authority of the City of Erie has condemned the premises known as 926 State Street, Erie, Pennsylvania, owned by Achilles C. Pulakos.

(5) The Authority exercised reasonable efforts to relocate owner's business to other locations within the Project Area despite the lack of legal compulsion on the part of Authority to do so.

(6) That there is no evidence before the court to indicate that the City Planning Commission was motivated by fraud, palpable bad faith, arbitrariness or caprice in certifying that the area in question was blighted.

(7) That the Authority reasonably relied on expert opinion in its determination on that owner's property should be required.

(8) That there is no evidence before the court to indicate that the Authority acted fraudulently, arbitrarily, capriciously or in bad faith in condemning the property of the owner.

Discussion

The first matter for our determination is whether or not the area in question is blighted.

Section 2(a) of the Urban Redevelopment Act defines the requirements for blight, and it reads as follows.

> "(a) That there exist in urban communities in this Commonwealth areas which have become blighted because of the unsafe, unsanitary, inadequate or overcrowded condition of the dwellings therein, or because of inadequate planning of the area, or excessive land coverage by the buildings thereon, or the lack of proper light and air and open space, or because of the defective design and arrangement of the buildings thereon, or faulty street or lot layout, or economically or socially undesirable land uses."

On appeal, and where the circumstances constituting blight are denied, the burden is on the Authority to prove, in fact, that blight does exist. *Faranda Appeal*, 420 Pa. 295, 302. However, it is not necessary that each and every one of the conditions thus specified in the statute should exist. The presence of any one of them is sufficient to warrant such certification and the adoption of a redevelopment project. *Oliver (et al. Appellant) v. Clairton*, 374 Pa. 333, 340. Furthermore, the area must be considered in its entirety and not in its unseverable parts. The fact that one small part was free from blight would not render the Authority's determination arbitrary, for it is the purpose of an authority to deal with an area rather than individual properties. *Crawford v. Redevelopment Authority*, 418 Pa. 549; *St. Peter's v. Urban Red. Authority of Pgh.* 394 Pa. 194.

Charles A. Reeve was called as an expert witness by the Authority, and gave testimony as to the nature of the area in question. In fact, his was the only expert testimony offered in this regard by either side. Mr. Reeve characterized himself as a city planner and consultant, one who had

previously been employed as a planner by the Authority in connection with the Liberty-Sassafras Urban Renewal Plan, and later as director of planning for the City Planning Division of the City of Erie.

With regard to the criteria of blight set forth in the Redevelopment statute, Mr. Reeve testified as follows:

1. ". . . There are a number of dwelling units that existed in the downtown Erie urban renewal project on the second and third floors of structures located over commercial or other non-residential uses. By personal inspection of the exterior of these structures and knowledge of inspections made by others of the interiors, they are by accepted planning criteria unsafe, unsanitary, inadequate or over-crowded. Unsafe refers to situations where stairs might be broken, being a hazard to personal injury; wiring might be overloaded, being a hazard to fire or something of that nature; unsanitary may be inadequate or unworkable plumbing facilities; inadequate refers to the space available for family living generally, and related to over-crowding, there being too many families for the number of rooms available."

2. That the area had been inadequately planned because

". . . This entire area was developed at a time when there was little if any planning, and like Topsy it just grew, and because of this it is just a collection of things without any particular rhyme or reason. . ."

3. That there were mixed uses in the area:

"Yes, as I mentioned previously, there are uses where you have residential uses above commercial uses. We find some manufacturing uses involved in the downtown business district."

4. With regard to excessive land coverage:

"Our studies indicate that in the downtown area some parcels are covered one hundred per cent by structures, to the exclusion of any open space on the

side. Continuing, the next clause says: '. . . or the lack of proper light and air and open space.' This relates in a sense to the former, because a lot that is built up one hundred per cent with a structure, and where the adjoining structures also abut right against it, it limits light and air to the property, and in a downtown area where all the land is built up, there is a lack of open space other than that which is used for traffic."

5. Relative to defective design:

". . . 'Because of the defective design and arrangement of the buildings thereon.' We found in a number of cases that buildings were designed or had been remodelled to the extent that—well, we did find buildings where the upper floors were unusable by reason of the design or arrangement; that they were sealed off, vacant, and were potential hazards from fire or other problems."

6. Relative to faulty street on lot layout:

"The downtown area has a gridiron street system, which we found generally to be all right in terms of future use; however, many of the streets were narrow and would require widening to accommodate modern day traffic. The lot layout in many cases represented long narrow lots of less than twenty-five feet in width, which are unusable or difficult to develop properly in contemporary development."

7. Regarding economically or socially undesirable land use:

"These relate to the use of downtown land where your primary concern is retail-business office uses, the type of uses typically associated with a central business district. Where land or building space is used for residential use, it deprives you of that use for those purposes, or manufacturing or other uses that would be better located elsewhere."

This testimony was neither rebutted by contradictory evidence nor weakened by cross examination. The ques-

tion of blight was raised for the first time in the brief and oral argument of counsel for Mr. Pulakos. This, despite the fact that the City Planning Commission's resolution depicting this area as blighted was dated October 30, 1962, and that City Council acknowledged the same to be true in their resolution of February 12, 1965. Many old and decrepit buildings, some in the same block as Mr. Pulakos' property, have been removed as the result of this project. We believe that the conditions outlined by Mr. Reeve did, and in some instances, still do exist, and we so find.

Mr. Pulakos then contends that both the City Planning Commission and the Redevelopment Authority were arbitrary, the former in its certification that the area was blighted, and the latter in condemning and marking for acquisition the owner's property.

The *Farada Appeal*, supra, indicates that where the matter of blight is contested that the court must make a factual finding in this regard, which we have done. However, in *Schenck v. Pittsburgh et al.*, 364 Pa. 31 (1960) where a similar argument was made the court seems to indicate that our scope of review is somewhat more limited, and that we need only determine that the involved agency acted in good faith. At page 35, the court said:

> "In the absence of any indication that the Commission did not act in good faith or was wholly arbitrary in certifying the area designated by it as blighted, its certification to that effect is not subject to judicial review. Among the conditions enumerated in the Urban Redevelopment Law as constituting a 'blighted' area are 'inadequate planning of the area', 'excessive land coverage by the buildings thereon', 'defective design and arrangement of the buildings thereon', 'faulty street or lot layout', and 'economically or socially undesirable land uses'. Such conditions were found by the City Planning Commission to exist . . . the existence of these conditions brings the situation clearly within the scope of the Urban Rede-

velopment Law, and, since that Act gives the Power of Eminent Domain to the Urban Redevelopment Authority, it is for that agency, and not for the courts, to determine whether or not the power should be exercised in this particular instance. It has been held in many cases that where the Right of Eminent Domain is vested in a municipality, an administrative body, or even a private corporation, the question as to whether the circumstances justify the exercise of the power in a given instance is not a judicial one, at least in the absence of fraud or palpable bad faith."

See also *Crawford v. Redevelopment Authority, Aplnt.*, 418 Pa. 549 (1965) 554, where it was stated:

> "The power of discretion over what areas are to be considered blighted is solely within the power of the Authority. The only function of the courts in this matter is to see that the Authority has acted not in bad faith; to see that the Authority has not acted arbitrarily, to see that the Authority has followed the statutory procedures in making its determination; and finally, to see that the actions of the Authority do not violate any of our constitutional safeguards. Within this framework then, we must examine the plaintiff-appellee's assertions and evidence, and the action of the court below."

Applying this to the matter before us it is our opinion that the record is completely devoid of evidence that would in any way indicate that the City Planning Commission acted either in bad faith or arbitrarily. In fact, the testimony indicates just the opposite, that the Planning Commission was an organization of high-type, community-minded individuals whose only aim was to revitalize the downtown section and thus contribute to the overall development of the city. They relied not only on the expert advice of their chief planning director, Mr. Reeve, and his staff, but according to its resolution of October 30, 1962,

made a preliminary study of the area and its members conducted a full inspection before reaching their conclusion. These members were business and professional men who had a knowledge of this area, gained through years of personal observation. That they acted not only in good faith, but with intelligence, is borne out by the fact that every agency or governmental body that later considered this project, city, county, state and federal, corroborated the conclusion of the Commission that the project area was in fact blighted. We find the contention of the owner in this regard a mere bald assertion, completely devoid of merit and completely without factual basis. In any event, we have, as previously noted, found that the area was blighted under the requirements of the Act. This would make any further argument in this regard purely academic.

While both *Schenck v. Pittsburgh, et al.* and *Crawford v. Redevelopment Authority, Aplnt.* supra, concerned the certification of blight by a commission or authority the principles propounded by the court apply with equal vigor to the owner's fourth contention that the Authority acted arbitrarily in condemning this property.

This is borne out by the statement of the court in *St. Peter's v. Urban Red. Auth. of Pgh.*, 394 Pa. 194 at 197.

> "And it is generally settled that unless bad faith, arbitrary action, or failure to follow a statutory requirement are shown, the certification by an authority that an area is blighted *and the plan for improving it are not subject to judicial review: Schenck v. Pittsburgh*, 364 Pa. 31 (1950); *Oliver v. Clairton*, supra, 374 Pa. 333 (1953); *Lazrow v. Philadelphia Housing Authority*, 375 Pa. 586 (1954); *Blumenschein v. Pittsburgh Housing Authority*, 379 Pa. 566 (1954)." Emphasis ours.

And again, in *Faranda Appeal*, 420 Pa. 295, 299:

> "In sustaining the lower court's dismissal of this objection, we are mindful of the words of this court

in *Blumenschein v. Pittsburgh Housing Authority*, 379 Pa. 566, 572, 573, 109 A. 2d 331: '. . . By a host of authorities in our own and other jurisdictions (citing cases) it has been established as an elementary principle of law that courts will not review the actions of governmental bodies or administrative tribunals involving acts of discretion, in the absence of bad faith, fraud, capricious action or abuse of power; they will not inquire into the wisdom of such actions or *into the details of the manner adopted to carry them into execution*. . .' (emphasis supplied) in the absence of a showing of any fraud, abuse of discretion or bad faith. . ."

This record is replete with evidence that Mr. Pulakos' property was not singled out by the Authority through any ulterior motive, but that the property, as was the adjoining properties, earmarked for condemnation for planning purposes in every plan, survey or study made of this redevelopment area. Mr. Reeve testified that at the time he first came to Erie in 1961 one Maurice Roteval was then completing a conceptual plan for the City of Erie; that one of the key points of the Roteval plan was transient housing and that the Pulakos property was even then earmarked for acquisition.

Following the Planning Commission's finding that the area was blighted this was certified by the Commission to City Council that Council then turned the matter over to the Redevelopment Authority for the preparation of a redevelopment proposal. This proposal was submitted to the Federal Government where the proposal was approved. The Authority then retained three firms that comprised Allegheny Planning Associates. These firms were Dieter and Ritchie, Architects of Pittsburgh, Simonds and Simonds, a landscape architectural firm also of Pittsburgh, and General Planning and Resource Consultants from St. Louis, Missouri.

These firms then made a detailed inspection of the properties and structures in the project area. In so doing,

they made a finding that the Pulakos property had sufficient structural defects to classify it as sub-standard warranting clearance. The property to the north of the subject property, and formerly owned and occupied by a White Cross Discount Store, was also designated sub-standard. Reeve testified that the Pulakos and White Cross properties, and the Fisher Building to the south (already dismantled), should in the interest of good planning be assembled as one plot to accomplish a usable disposition and redevelopment.

Again, not relying solely on its own judgment the Authority requested a transient housing study. This was done by the Real Estate Research Corp. of Chicago, who in its report of May, 1964, stated that the area along West Tenth Street at either State or Peach Streets was a suitable location for transient housing. Thus, we again have the specific area involved by an independent agency.

Again, not relying solely on its own judgment and because it was felt that the downtown project was fundamental to the economy of the City of Erie; the Authority requested the Citizens Action Committee to appoint an economic subcommittee that would concentrate on the type of re-use of the project property that would contribute to the development of the downtown economy. This committee, after reviewing the recommendations of the planning consultant (Allegheny Planning Associates) concluded that a hotel-convention facility was vitally important to the support of downtown land values.

After all this data was assembled the Authority prepared a final project report, which included the proposed acquisition of the Pulakos property. This was submitted to and approved by the Federal Government. The report was then again referred to the City Planning Commission, who by its resolution dated February 2, 1965, recommended that the plan be approved and accepted. It was then sent to City Council and approved after a public hearing. The plan was also approved by the Commonwealth of Pennsylvania and the County Planning Commission. The

approval of the Urban Renewal Plan, which included the acquisition of the subject property by every interested agency, after thorough study, in our opinion, completely negates any arbitrary or capricious action or bad faith on the part of the Authority.

The last objection raised by the owner is that the intended re-use of the property, i. e. transient housing, has no reasonable probability of fulfillment. However, at this time a binding proposal from Metropolitan Hotel Ventures for the property in question has been accepted by the Authority, and the sale has been approved by the appropriate Federal Agency. A public hearing was held by City Council on September 3, 1969 and on September 10, 1969 that body again considered matters in this regard.

While it appears that the final approval is imminent this is entirely immaterial, for the Supreme Court of Pennsylvania has held that the purpose of the Urban Redevelopment Act is the clearance, reconstruction and rehabilitation of blighted areas and that there is no requirement in the statute that a redeveloper must be chosen or that a contract be entered into with a developer for the re-use of the land as a pre-requisite to the condemnation of the property. See *Faranda Appeal*, 420 Pa. 295, 299.

The law in this regard is also fully set forth in *Belovsky v. Redevelopment Authority*, 357 Pa. 329 (1945) 339.

> "One of the objections urged against the constitutionality of the Urban Redevelopment Act is the feature of the 'redevelopment project' which contemplates the sale by the Authority of the property involved in the redevelopment, it being claimed that thereby the final result of the operation is to take property from one or more individuals and give it to another or others. Nothing, of course, is better settled than that property cannot be taken by government without the owners' consent for the mere purpose of devoting it to the private use of another, even

though there be involved in the transaction an incidental benefit to the public. But plaintiff misconceives the nature and extent of the public purpose which is the object of this legislation. That purpose, as before pointed out, is not one requiring a continuing ownership of the property as it is in the case of the Housing Authorities Law in order to carry out the full purpose of that act, but is directed solely to the clearance, reconstruction and rehabilitation of the blighted area, and after that is accomplished the public purpose is completely realized. *When, therefore, the need for public ownership has terminated, it is proper that the land be re-transferred to private ownership, subject only to such restrictions and controls as are necessary to effectuate the purposes of the Act.* It is not the object of the Statute to transfer property from one individual to another; such transfers, so far as they may actually occur, are purely incidental to the accomplishment of the real or fundamental purpose." (Emphasis ours).

Nor do we believe that the fact that the subject parcel, along with other land in the same block, was earmarked for a particular use, alters the situation. According to our interpretation of both *Faranda* and *Belovsky*, supra, even if the proposed use is ultimately not feasible, this would in no way restrict the right of the Authority to condemn and acquire the property.

We, therefore, conclude

(1) That the Downtown Erie Urban Renewal Project Area was, in fact, a blighted area.

(2) That the City Planning Commission's certification that the aforesaid area was blighted was not arbitrary.

(3) That the Redevelopment Authority of the City of Erie was not arbitrary in designating the property owned by Achilles C. Pulakos and located at 926 State Street, Erie, Pennsylvania, for acquisition or in condemning the said property.

(4) That the Urban Redevelopment Law of Pennsylvania does not require the execution of a contract with a redeveloper prior to condemnation or acquisition.

ORDER

And now, to-wit, this 11th day of September, 1969, for the reasons set forth above, the preliminary objections of the owner, Achilles C. Pulakos, are dismissed.

EDWARD H. CARNEY, P. J.

APPENDIX B

OPINION OF THE SUPREME COURT OF PENNSYLVANIA WESTERN DISTRICT

FILED: July 2, 1970

EAGEN, J.

In this condemnation case, the condemnee filed preliminary objections to the declaration of taking which were overruled in the court below on September 11, 1969. On October 21st, the condemnee filed a petition with the court to open, vacate and set aside its order of September 11th, and to grant a re-hearing. This petition was denied on October 23rd. The instant appeal was filed on October 28th. It will be quashed.

The Eminent Domain Code, Act of June 22, 1964, Spec. Sess., P.L. 84, Art. V. §523, 26 P.S. §1-523 (Supp. 1970), provides for an appeal "to the Supreme or Superior Court as the case may be, from any order or judgment of the court of common pleas *within 45 days from the entry thereof.*" (Emphasis added.)

Since the court below did not grant a stay of proceedings in connection with condemnee's petition of October 21st, the running of the time for taking an appeal was not postponed: *Francis v. Brashear School District*, 435 Pa. 589, 258 A. 2d 509 (1969); *Erie v. Piece of Land*, 341 Pa. 310, 17 A. 2d 399 (1941). Hence, the time provided by the Code for taking the present appeal began to run on September 12th and the 45th day thereafter was October 26th. Since this day fell on a Sunday, the final day for taking the appeal was automatically extended to Monday, October 27th. The Statutory Construction Act, Act of May 28, 1937, P. L. 1019, Art. III, §38, as amended, August 11, 1959, P.L. 691, §1, 46 P.S. §538. Cf. *Alexander Unemployment Compensation Case*, 398 Pa. 551, 159 A. 2d 689 (1960). An ap-

peal filed thereafter was untimely and the statutorily prescribed period may not be judicially extended or obviated. *Jones v. Unguriet*, 364 Pa. 200, 71 A. 2d 240 (1950).

In his brief, the appellant states that the appeal "was filed with the Supreme Court on October 23, 1969." This is incorrect. An examination of the record discloses that the signature on the appeal form was verified by affidavit dated October 23, 1969, and sometime thereafter (the record does not disclose the date), the appeal form was mailed in Erie, addressed to the Prothonotary's Office for the Western District of the Supreme Court in Pittsburgh. But, it was not received in the Prothonotary's Office until October 28th. The appeal was docketed the very same day. This is the determinative day as to when the appeal *was filed*. Cf. *Malis v. Lieberman*, 438 Pa. —, — A. 2d — (1970), and *Burdett Oxygen Co. v. I. R. Wolfe & Sons, Inc.*, 433 Pa. 291, 249 A. 2d 299 (1969).

Appeal quashed.

Mr. Justice Pomeroy concurs in the result.
Mr. Justice Roberts dissents.

APPENDIX C

STATUTORY PROVISIONS INVOLVED

Constitution, Amendment XIV—Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Pennsylvania Eminent Domain Code, 26 Purdon's Pa. Stat. Ann. 1-523

> "Either party may appeal to the Supreme or Superior Court as the case may be, from any final order or judgment of the Court of Common Pleas within forty-five days from the entry thereof."